



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2021-0381; FRL-8782-02-R1]

#### **Air Plan Approval; Maine; Chapter 100 Definitions and Chapter 113 Growth Offset Regulations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision amends the definition of “Ozone Transport Region” in the State’s Chapter 100 Definitions Regulation and revises language in the State’s Chapter 113 Growth Offset Regulation regarding applicability of Nonattainment New Source Review in areas that, at a future date, may not be within the Ozone Transport Region. The intended effect of this action is to approve the submittal into the Maine SIP. This action is being taken under the Clean Air Act (CAA).

**DATES:** This rule is effective on **[Insert date 30 days after date of publication in the *Federal Register*]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2021-0381. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your

inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

**FOR FURTHER INFORMATION CONTACT:** John Creilson, Air Quality Branch, U.S.

Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05-2), Boston, MA 02109, tel. (617) 918-1688, email creilson.john@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

## **Table of Contents**

- I. Background and Purpose
- II. Response to Comments
- III. Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

### **I. Background and Purpose**

On July 29, 2021 (86 FR 40793), EPA published a notice of proposed rulemaking (NPRM) for the State of Maine, proposing to approve two SIP revision submitted by the State on February 10 and 24, 2021. The SIP revision proposed to: 1) amend the definition of “Ozone Transport Region” in their existing Code of Maine Rules (C.M.R.) Chapter 100 Definitions Regulation; and 2) revise language in Sections 1 and 2 of the existing C.M.R. Chapter 113 Growth Offset Regulation regarding applicability of Nonattainment New Source Review (NNSR) in areas that, at a future date, may not be within the Ozone Transport Region (OTR). The proposed SIP revisions in the NPRM are consistent with the State’s pending petition to remove certain portions of the State from the OTR. However, Maine’s rule language was structured such that no such changes in the application of NNSR would occur until removal of portions of the State from the OTR was approved by the EPA Administrator. In addition, the NPRM addressed codification

issues between the existing SIP and the amended portions of Maine's current regulations submitted as proposed SIP revisions.

The rationale for EPA's proposed action is explained in the NPRM and will not be restated here.

## **II. Response to Comments**

EPA received one public comment during the comment period. The one comment received supported EPA's proposed action. This comment is included in the docket of this action.

## **III. Final Action**

EPA is approving Maine's February 10 and 24, 2021, SIP revision requests pertaining to its Chapter 113 Growth Offset and Chapter 100 Definitions Regulations, respectively.

## **IV. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of C.M.R. Chapters 100 and 113 described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

## **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k);

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 26, 2021.

Deborah Szaro,  
Acting Regional Administrator,  
EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart U - Maine**

2. In § 52.1020(c), amend the table by revising the entries for “Chapter 100” and “Chapter 113” to read as follows:

#### **§ 52.1020 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

#### **EPA-Approved Maine Regulations**

<b>Maine state citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date <sup>1</sup></b>	<b>Explanations</b>
**	*	*	*	**
Chapter 100	Definitions	February 9, 2021	[Insert date of publication in the <i>Federal Register</i> ], [Insert <i>Federal Register</i> citation]	Amend the definition of Ozone Transport Region.
**	*	*	*	**
Chapter 113	Growth Offset Regulation	January 14, 2019	[Insert date of publication in the <i>Federal Register</i> ], [Insert <i>Federal Register</i> citation]	Revisions to Sections 1 and 2 of the previously approved rule.
**	*	*	*	**

<sup>1</sup> In order to determine the EPA effective date for a specific provision listed in this table, consult the *Federal Register* notice cited in this column for the particular provision.

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